



Development Services Department

August 24, 2012

Kamal Nona
1495 Melrose Ave
Chula Vista, Ca 91910

RE: Conditional Use Permit Application PCC-11-073 for the Sale of Beer & Wine
at the UnoCal Gas Station and Mini-Mart

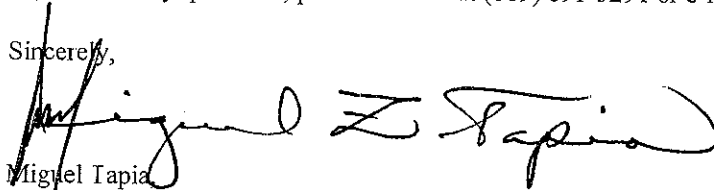
Dear Mr. Nona:

On August 9, 2012, the Zoning Administrator held a public hearing to consider the above-referenced project. On August 24, 2012, after considering all reports, evidence, and testimony, the Zoning Administrator approved the Project subject to conditions of approval. Attached, please find the Final Notice of Decision documenting the Zoning Administrator's action and listing the conditions of approval. Please review the document thoroughly and sign on the signature lines of condition #2 on page 5, to acknowledge your acceptance of the conditions of approval. To complete the discretionary phase of your project, please return one signed copy of this Notice. As a courtesy, we have included a strikeout/underline version of the draft notice of decision to aid in your review of the final document and the revisions to the draft document you had received prior to the hearing.

The Applicant or other interested person may appeal the decision of the Zoning Administrator to the City Council within 10 business days following the Zoning Administrator's Decision. The 10-day appeal period will commence on Monday, August 27, 2012 and expire at 4:00 on Wednesday, September 12, 2012. The fee for filing an appeal to the City Council is \$250.00. If an appeal is filed by either yourself or another party, an additional deposit of \$5,000 is required to be paid by the Applicant (yourself) to cover the City's processing costs.

If you have any questions, please call me at (619) 691-5291 or e-mail me at mtapia@ci-chula-vista.ca.us

Sincerely,


Miguel Tapia
Project Manager

Attachment: Final Notice of Decision
Strikeout/Underline version of the Draft Notice of Decision

cc: Marco Polo Cortes, 640 West Beech Street, Ste. 3B, San Diego Ca, 92101
Gary Halbert, Assistant City Manager/Development Services Director
Mary Ladiana, Zoning Administrator
Richard Zumwalt, Project Planner



ZONING ADMINISTRATOR
FINAL NOTICE OF DECISION

Date: August 24, 2012
Applicant: Kamal Nona, Unocal Gas Station and Mini-Mart
Case No.: PCC-11-073
Address: 1495 Melrose Ave, Chula Vista, Ca.
A.P.N.: 624-080-07-00
Project Planner: Richard Zumwalt, A.I.C.P., Associate Planner

Notice is hereby given that on August 9, 2012, the Zoning Administrator considered a Conditional Use Permit (PCC-11-073) application filed by Kamal Nona ("Applicant") to allow the off-site sales of alcoholic beverages limited to beer and wine only, at the existing Unocal Gas Station and Mini-Mart ("Project"). The site is located at 1495 Melrose Ave, in Chula Vista, Ca. ("Project Site"). The Project site has a zoning designation of Neighborhood Commercial (CN), and a General Plan designation of Commercial Retail (CR). The Property is owned by Kamal Nona ("Property Owner"). The proposed land use is more specifically described below:

The application requests approval of a Conditional Use Permit to allow the sale of alcoholic beverages for off-site use or consumption, limited to the sale of beer and wine only, pursuant to the CN zone and Chula Vista Municipal Code Section 19.58.430 (Liquor Stores in the CN Zone). The Project Site contains the existing Unocal Gas Station and Mini-Mart, including a single-story building with an area of 1,842 square feet in size, a gas re-fueling station and 9 parking spaces. The business would be open between 7 a.m. to 11 p.m. each day of the week. The Gas Station and Mini-Mart anticipates a maximum of two employees at one time.

The Director of Development Services has reviewed the proposed Project for compliance with the California Environmental Quality Act and has determined that the Project qualifies for a Class 1 categorical exemption pursuant to Section 15301 (existing facilities) of the State CEQA Guidelines. Thus, no further environmental review is required.

The Director of Development Services set the time and place for a hearing on said Conditional Use Permit and notice of said hearing, together with its purpose, was given by its publication in a newspaper of general circulation in the city and its mailing to property owners and residents within 500 feet of the exterior boundaries of the property at least 10 days prior to the hearing.

The hearing was scheduled, advertised and held on August 9, 2012, at 4:00 p.m. in Executive Conference Room 103 A & B, Chula Vista City Hall Building 100, 276 Fourth Avenue, before the Zoning Administrator.

The Zoning Administrator considered all reports, evidence, and testimony presented at the public hearing with respect to the subject application, and under the provisions of Section 19.14.040 of the Chula Vista Municipal Code does hereby make the following Conditional Use Permit findings as required by CVMC Section 19.14.080:

That the proposed use at this location is necessary or desirable and will contribute to the general well being of the neighborhood or the community.

The existing Unocal Mini-Mart is a retail commercial business which is located in an area that supports other retail commercial businesses that sell alcoholic beverages, therefore the use is consistent with other uses in the surrounding area. Approval of this Project would contribute to the general well-being of the neighborhood by encouraging competition in retail sales, and would benefit the Applicant's customers by providing more convenient availability of beer and wine. Two of the three other nearby retail businesses have Off-site General ABC licenses that permit the sales of a wider variety of alcoholic beverages, such as distilled spirits, but this Project would be limited to beer and wine sales only.

That such use will not under the circumstances of the particular case be detrimental to the health, safety or general welfare of persons residing or working in the vicinity or injurious to property or improvements in the vicinity.

The applicant is required to obtain an Alcoholic Beverage Control license from the State Of California Alcoholic Beverage Control Department (ABC) that limits the sale of alcohol to beer and wine only, in compliance with all applicable state and local regulations. Conditions of approval are recommended by the Police Department to be included in the CUP and ABC license, which will ensure that public convenience and necessity will be served, and the sale and consumption of alcoholic beverages will not adversely affect the neighborhood. In addition conditions of approval are included which ensure that the applicant will enhance the appearance of the Project site and building, including the following:

- A limitation on the hours of beer and wine sales from 7 am to 11 pm daily;
- That adequate exterior lighting be provided to enhance safety and visibility;
- That loitering adjacent to the business be prohibited;
- That exterior signage or advertising of alcohol sales be prohibited;
- That graffiti be removed from the premises within 48 hours;
- Restrictions on the sale of alcoholic beverages, such as limits on the type, container size, quantity, and alcohol content of alcoholic beverages be included;
- That signage will be required to obtain approval of sign permits, as necessary, and that un-permitted signage shall be removed;
- That existing landscaping will be refreshed, including replacement of dead and missing plants, and maintenance and repair of the irrigation system, as necessary.
- That the parking lot pavement will be repaired and re-striped.

Sale of alcoholic beverages is limited to off-site consumption only, and when considered in conjunction with the recommended conditions of approval, any adverse impacts to the immediate surrounding neighborhood would be minimized.

That the proposed use will comply with the regulations and conditions specified in the code for such use.

Granting of this conditional use permit is conditioned to require the Applicant and Property Owner to fulfill the conditions of approval and to comply with all applicable regulations and standards specified in the Municipal Code for such use. These conditions will be enforced through inspections prior to occupancy of the use and subsequent operation of the business. Furthermore, the conditions of this permit are approximately in proportion to the nature and extent of the impact created by the project in that the conditions imposed are directly related to, and of a nature and scope related to the size and impact of the project. The project will comply with all regulations and conditions specified in the Zoning Code for uses established under PCC-11-073.

That the granting of this Conditional Use Permit will not adversely affect the General Plan of the City or the adopted plan of any government agency.

The General Plan designates the site as Commercial Retail, which permits commercial land uses. A Gas Station with a Mini-Mart selling alcoholic beverages limited to beer and wine is considered consistent with the Commercial Retail General Plan Land Use designation, upon approval of a Conditional Use Permit. Thus, the proposed Mini-Mart business selling alcoholic beverages is consistent with the General Plan Land Use and Transportation Element, and will not adversely affect implementation of the City's General Plan.

CVMC Section 19.58.430, "Liquor Stores in the CN Zone"

The proposed use, a Gas Station and Mini Mart selling alcoholic beverages, is a Conditional Use that is addressed in the CN Zone, Section 19.34.030 F, and therefore requires approval of a Conditional Use Permit. The Zoning Administrator, under the provisions of Section 19.58.430 of the Chula Vista Municipal Code, has been able to make the following Conditional Use Permit findings. Section 19.58.430 states that a CUP shall not be granted unless the Zoning Administrator finds, in his or her discretion, based on substantial evidence in view of the entire record, that the facts required by CVMC 19.14.080 (above) exist, and that the CUP will not result in an over-concentration of such facilities. Over-concentration may be found to exist based on:

(A) The number and location of existing facilities;

The site is located across Melrose Street from the existing Orange Villa Plaza neighborhood retail center, and a smaller strip-commercial retail center adjacent to the site on the north. Three other retail businesses which have off-site ABC licenses are located within 500 ft. of the Project site. The site is also located one block from the I-805 freeway and many residents and visitors pass by the Project site to gain access to the Freeway. However, with the exception of this commercial node, this area of the City is largely residential and does not have an extensive amount of land developed with retail commercial uses. The next closest neighborhood retail centers are 0.75 miles to the west.

at Hilltop and Orange Avenue, and to the south at the intersection of Main Street and Melrose Avenue. The nearest major commercial district is Third Avenue, which is approximately 1.5 miles to west. To the east, across I-805, the nearest retail commercial center is approximately .65 miles away at the intersection of Brandywine Street and Sequoia Street. In this area of the City, there is a limited number of retail establishments serving a very large residential area. The remainder of area within 0.75 mile of the site consists of mostly single-family residential development, a few multi-family residential buildings along Orange Avenue, within 5 different census tracts, and is generally auto-oriented in design. Thus, the Project would provide retail services to residents of a much larger area than the area of its census tract.

(B) Compliance with State Alcoholic Beverage Control Over-concentration standards in effect at the time of project consideration;

For off-site retail ABC licenses, Undue (or Over) Concentration means that the Applicant's premises is located in an area where the ratio of off-sale retail licenses to population in the census tract or census division in which the Applicant premises are located exceeds the ratio of off-sale retail licenses to population in the county in which the applicant premises are located. According to the Chief of Police, the maximum permitted number of ABC licenses for this census tract is 38. This Project would constitute the fourth ABC license, therefore the Applicant applied for a Public Convenience and Necessity (PCN) review because of the concentration of approved ABC licenses within the census tract containing the Project site. The Chief reviewed the PCN request and determined that the Project provides enhanced convenience for the Applicant's customers by allowing the sales of beer and wine for off-site consumption, and therefore the public convenience and necessity would be served. The Chief of Police recommends approval of the Project, subject to their conditions of approval.

(C) The impact of the proposed facility on crime;

According to the Chief of Police, approval of the Project would not have a significant impact on crime, and the Project site is not located in a high-crime area. The crime rate for the reporting district is 61.9%, where a 120% crime rate would be required to constitute a high crime area.

(D) The impact of the proposed facility on traffic volume and flow.

The Project does not propose construction or remodeling of the building which would trigger building or site improvements, and the existing driveway design complies with City standards, therefore no change to the existing vehicle access and driveways is required. The City's Traffic Engineering section has reviewed the Project and determined that addition of alcoholic beverage sales to an existing retail business would not significantly increase the volume of traffic generated. Therefore, the Project does not result in a significant impact on traffic volume and flow.

BASED ON THE FINDINGS ABOVE AND INCORPORATING THEM HEREIN AND AFTER CONSIDERING ALL REPORTS, EVIDENCE, AND TESTIMONY, THE ZONING ADMINISTRATOR hereby approves Conditional Use Permit PCC-11-073 as described above. The following conditions shall apply to the Project Site, and the Applicant or successor-in-interest shall satisfy these conditions prior to establishment of the use and the commencement of sales of alcoholic beverages, or at the timeframe specified in the condition:

PLANNING DIVISION:

1. The Project Site shall be maintained in accordance with the PCC-11-073 approved plans, which include site plans and floor plans on file in the Planning Division, the conditions contained herein, and the Zoning Ordinance (Title 19). The Applicant or successor-in-interest shall remain in compliance with the conditions as long as the Project relies upon this approval.
2. The Property Owner, Applicant or authorized representative shall execute this document by making a true copy of this Notice of Decision and signing both this original notice and the copy on the lines provided below, said execution indicating that the Property Owner and the Applicant have each read, understood and agreed to the conditions and land use operation modifications contained herein, and will implement same. Upon execution, the true copy with original signatures shall be returned to the Development Services Department. Failure to return the signed true copy of this document prior to submittal for building permits to the Development Services Department shall indicate the Property Owner's and Applicant's desire that the project, and the corresponding application for building permits and/or a business license, be held in abeyance without approval.

Signature of Property Owner

Date

Signature of Applicant or Authorized Representative

Date

3. The applicant shall obtain an alcoholic beverage control license permitting off-site sales of beer and wine only, from the State of California Alcoholic Beverage Control (ABC) Department, prior to commencement of sale of alcoholic beverages. The Applicant shall comply with the applicable State ABC Laws and City Ordinances, and all conditions required by the Chula Vista Police Department pertaining to the sale and consumption of alcoholic beverages.

Upon certification by the Development Services Department for occupancy or establishment of use allowed by this Conditional Use Permit, the following conditions shall apply:

PLANNING DIVISION:


4. This permit is valid for operation of a Gas Station and Mini-Mart with off-site sale of beer and wine only, pursuant to CVMC 19 34.010.

5. The hours of beer and wine sales shall be limited to 7:00 a.m. to 11:00 p.m., Monday through Sunday (seven days a week).
6. The Applicant shall operate the project in compliance with the Performance Standards, CVMC Chapters 19.66 and Performance Standards and Noise Control, Chapter 19.68.
7. Within 30 days of approval of this permit, the Applicant shall submit signage plans to the satisfaction of the Development Services Department to determine if the Project signage complies with the Sign Ordinance (CVMC Chapter 19.60) and CN Zone (CVMC 19.34.010). If this review shows the existing signage is not in compliance, the applicant shall apply to the Development Services Department for sign permits to modify the Project signage. Information regarding the type, size and location of all signs must be included in the plans. Any un-permitted signage must be removed within 30 days. Signs advertising specific products, or services or uses that are not permitted in the CN Zone or Sign Ordinance, shall not be permitted.
8. The Applicant shall operate the business in compliance with CVMC Chapter 9.17: Drug Paraphernalia-Prohibited, and CVMC Chapter 5.37: Narcotic or Drug Paraphernalia Shops.
9. Pursuant to CVMC 19.34.180, each year prior to issuance or renewal of the business license, the Applicant shall present evidence to the satisfaction of the Director of Development Services showing compliance with CVMC Section 19.34.090 and 19.34.120, including that the Project is continuing to operate in compliance with the permitted uses and other requirements described in the CN zone.
10. Exterior site lighting shall be provided to enhance safety and visibility. Light fixtures shall be shielded to confine light within the site and prevent glare into adjacent properties, in compliance with CVMC 19.66.100.
11. Within 60 days of approval of this Permit, the existing landscaping shall be refreshed, including replacement of dead and missing plants, and maintenance and repair of the irrigation system.
12. The Applicant shall ensure that the landscaping is watered and well-maintained and the site is kept clean of trash and debris.
13. Within 60 days of approval of this Permit, the Applicant shall repair or replace any damaged curb, gutter and sidewalk, and if required, obtain an encroachment permit prior to commencement of the work.
14. Within 60 days of approval of this Permit, the parking lot pavement shall be repaired or resurfaced, and parking spaces, including the handicapped space and handicapped loading area, shall be cleared of any obstructions and re-striped per the approved site plan.

15. If a formal complaint is received by the Director of Development Services, or if the Director determines that the Applicant is not operating in compliance with the conditions of approval of this permit, then the Director has the discretion to initiate an investigation which may include requesting the applicant to submit plans, technical studies, or other information deemed necessary to respond to the complaint or non-compliance issue. After review, the Director has the discretion to either maintain the existing Conditional Use Permit, modify the Conditional Use Permit, or revoke the Conditional Use Permit, pursuant to the requirements of CVMC Section 19.14.270.
16. Prior to the sale of alcoholic beverages, the Applicant, shall obtain approval of the Alcoholic Beverage Control License and operate in compliance with the following requirements requested by the Chula Vista Police Department (CVPD) that are justified by the California Business & Professions Code and are necessary to maintain public safety and prevent nuisance activities:
 - a. Sales of alcoholic beverages shall be limited to beer and wine only and comply with all requirements of the approved ABC license.
 - b. Sales of alcoholic beverages shall be permitted only between the hours of 7 AM and 11:00 PM daily.
 - c. The parking lot of the premises shall be equipped with lighting of sufficient power to illuminate and make easily discernible the appearance and conduct of all persons on or about the parking lot. Additionally, the position of such lighting shall not disturb the normal privacy and use of any neighboring residences.
 - d. No wine shall be sold with an alcohol content of greater than 17% by volume except for "Dinner Wines" which have been aged two years or more.
 - e. Wine shall not be sold in bottles or containers smaller than 750 ml.
 - f. No beer or malt beverage products shall be sold regardless of container size, by single containers, but must be sold in manufacturer pre-package multi-unit quantities.
 - g. No loitering shall be allowed near the entrance/exit of the business.
 - h. The Applicant shall police the area under their control in an effort to prevent loitering of persons about the premises.
 - i. There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs, which are clearly visible to the exterior, shall constitute a violation of this condition.
 - j. The Applicant shall remove graffiti within 48 hours.
 - k. The Applicant shall be responsible for maintaining a litter free area in all areas under the petitioner(s) control.
 - l. Signs must be posted at all exits, advising customers that loitering and open containers of alcohol are prohibited outside of the business and reminding them not to disturb the neighbors with noise.
 - m. No beer or wine shall be displayed within five feet of the cash register or the front door unless it is in a permanently affixed cooler.
 - n. No advertisement of alcoholic beverages shall be displayed at motor fuel islands.

- o. No sale of alcoholic beverages shall be made from a drive-in window
 - p. No display or sale of beer or wine shall be made from an ice tub.
 - q. No beer or wine advertising shall be located on motor fuel islands and no self-illuminated advertising for beer or wine shall be located on buildings or windows.
17. Prior to approval of any request for an amendment of the approved ABC license or this Conditional Use Permit, the Applicant shall submit and obtain approval of an application requesting a substantial conformance review or modification of this Conditional Use Permit, for consideration by the Director of Development Services and the Chula Vista Police Department.
 18. Approval of this Project shall not waive compliance with all sections of Title 19 of the Municipal Code, including the Sign Ordinance, and all other applicable City Ordinances in effect at the time of the approval of this Conditional Use Permit.
 19. This permit shall become void if not used or extended within three years of the effective date thereof in accordance with Section 19.14.260 of the Chula Vista Municipal Code. Failure to comply with the any conditions of approval shall cause this permit to be reviewed by the City for additional conditions or revocation.
 20. The Applicant shall and does hereby agree to indemnify, protect, defend and hold harmless the City, its Zoning Administrator, City Council members, officers, employees, agents and representatives, from and against all liabilities, losses, damages, demands, claims and costs, including court costs and attorney's fees (collectively, "liabilities") incurred by the City arising, directly or indirectly, from (a) City's approval and issuance of this Conditional Use Permit, (b) City's approval or issuance of any other permit or action, whether discretionary or non-discretionary, in connection with the use contemplated by the permit, and (c) Applicant's installation and operation of the facility permitted. The Applicant shall acknowledge their agreement to this provision by executing a copy of this Conditional Use Permit, upon approval of the Zoning Administrator. Applicant's compliance with this provision is an express condition of this Conditional Use Permit and this provision shall be binding on any and all of the Applicant's/operator's successors and assigns.
 21. If any of the foregoing conditions fail to occur, or if they are, by their terms, to be implemented and maintained over time, if any of such conditions fail to be so implemented and maintained according to their terms, the City shall have the right to revoke or modify all approvals herein granted, deny, or further condition issuance of all future building permits, deny, revoke, or further condition all certificates of occupancy issued under the authority of approvals herein granted, institute and prosecute litigation to compel their compliance with said conditions or seek damages for their violation. The applicant or a successor in interest gains no vested rights by the City's approval of this Conditional Use Permit.

APPROVED BY THE ZONING ADMINISTRATOR OF THE CITY OF CHULA VISTA,
CALIFORNIA, this 24th day of August, 2012.



Mary Ladiana,
Zoning Administrator

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